



COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
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David K. Paylor
Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
OM SHREEE INCORPORATED
FOR
EAGLE ROCK MARKET
Facility ID No. 2-0004967**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and OSI, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Eagle Rock Market, located at 9904 Botetourt Road, Eagle

Rock, Virginia. The Facility's USTs and /or UST system are owned by Om shreee Incorporated and the Facility is further identified by UST Facility ID# 2-004967.

6. "NOAV" means a Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "OSI" means Om shreee Incorporated, a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. OSI is a "person" who owns the UST systems at the Facility.
11. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
12. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
13. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
14. "Release Detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
16. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. OSI is an owner and/or operator of the Facility within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
2. Department staff inspected the Facility and conducted a file review of Facility records for compliance with the requirements of the State Water Control Law and the Regulations on August 17, 2015. At the date of the inspection, there were five USTs containing petroleum on-site, three of which had 8,000-gallon capacities contained gasoline and two of which had 10,000-gallon capacities and contained diesel fuel. The USTs are coated and cathodically protected (STIP-3) and the associated piping is constructed of fiberglass reinforced plastic. DEQ staff observed a multiple violations of the Regulations, including failure to provide records of twelve months of release detection results for the USTs.
3. 9 VAC 25-580-120(2) and (3) requires owners and operators of UST systems to maintain documentation of corrosion protection equipment, documentation of UST system repairs, documentation of recent compliance with release detection requirements, results of the site investigation conducted as permanent closure, and make these records immediately available for inspection or readily available at an alternative site and be provided for inspection upon request.
4. 9 VAC 25-580-180(2) requires that the results of any sampling, testing or monitoring required under the Regulations be maintained for at least one year.
5. On April 4, 2016, the Department issued Notice of Violation (NOV) No. TBRRO158896 to OSI for violations listed in Paragraph C(2) above.
6. On August 24, 2016 and September 30, 2016, DEQ issued follow-up correspondence regarding the violations listed in Paragraph C(2) above. In response to the follow-up correspondence and previous phone calls, OSI submitted documentation of correction of most of the violations observed during the August 15, 2015 inspection.
7. Department staff inspected the Facility and conducted a file review of Facility records for compliance with the requirements of the State Water Control Law and the Regulations on January 25, 2017. At the date of the inspection, there were five USTs containing petroleum on-site, three of which had 8,000-gallon capacities contained gasoline and two of which had 10,000-gallon capacities and contained diesel fuel. The USTs are coated and cathodically protected (STIP-3) and the associated piping is constructed of fiberglass reinforced plastic. DEQ staff observed the following: Records of twelve months of release detection results for UST No. 3 and UST No. 4 were not available.
8. On February 1, 2017, the Department issued NOV No. TBRRO179796 to OSI for violations listed in Paragraph C(7) above.

9. On June 1, 2017, Department staff met with a representative of OSI to discuss the violations.
10. Based on the results of the January 25, 2017 inspection and the June 1, 2017 meeting, the Board concludes that OSI has violated 9 VAC 25-580-120 and 9 VAC 25-580-180(2) (recordkeeping for release detection), as described above.
11. In order for OSI to return to compliance, DEQ staff and OSI have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Om shreee Incorporated and Om shreee Incorporated agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$2,638.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

OSI shall include its Federal Employer Identification Number (FEIN) (_____) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of OSI for good cause shown by OSI, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, OSI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. OSI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. OSI declares that it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by OSI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. OSI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. OSI shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on his part. OSI shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the OSI intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and OSI.
11. This Order shall continue in effect until:
 - a. OSI petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to OSI.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve OSI from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by OSI and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of OSI certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind OSI to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of OSI.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, OSI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____.

Robert J. Weld, Regional Director
Department of Environmental Quality

Consent Order

Om shreee Incorporated; Eagle Rock Market; Facility ID. No. 2-004967; BR16-0809

Page 7 of 8

Om shreee Incorporated voluntarily agrees to the issuance of this Order.

Date: _____ By: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, by _____, who is _____ of Om shreee Incorporated.

Notary Public

Registration No.

My commission expires: _____

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

The following requirements pertain to the Facility:

Release Detection - USTs. By December 15, 2017, OSI shall submit copies of release detection records and results for all USTs at the Facility for a period of six consecutive months (June through November, 2017) to DEQ in accordance with 9 VAC 25-580-120 and 9 VAC 25-580-180. In the event of an “inconclusive” or “failed” result, including failed results due to low product levels, OSI shall: (1) immediately notify DEQ, (2) immediately consult with a third party vendor to assess the possible causes for the inconclusive and/or failed test result; (3) make the necessary changes to reduce the possibility of having future inconclusive and/or failed results (such changes could include upgrading existing release detection equipment or changing release detection methods) ; and (4) by sixty days after the date of the “inconclusive” or “failed” result, submit the written results of the investigation detailing the cause of the inconclusive and/or failed results and what OSI has done to correct the situation at the Facility. If a suspected release occurs, OSI shall: a) report the suspected release in accordance with 9 VAC 25-580-190, and b) investigate the suspected release in accordance with the release investigation requirements at 9 VAC 25-580-210.

DEQ Contact

Unless otherwise specified in this Order, OSI shall submit all requirements of Appendix A of this Order to:

Robert Steele
VA DEQ –Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

Phone: (540) 562-6777
Fax: (540) 562-6725
Email: Robert.Steele@deq.virginia.gov